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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,976	05/24/2001	Evan E. Koslow	369.7217USU	3444

30546 7590 07/16/2003

SHIRLEY S. MA
KX INDUSTRIES, L.P.
269 S. LAMBERT ROAD
ORANGE, CT 06477

EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/16/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,976

Examiner

Jennifer A Boyd

Applicant(s)

KOSLOW, EVAN E.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed April 14, 2003, have been entered as Paper No. 8 and have been carefully considered. Claims 1, 10 and 17 were amended, claims 21 - 25 were added and claims 1 - 25 are pending. The Examiner withdraws the 35 U.S.C. 112, 2nd paragraph rejection of claims 6 - 9 as set forth in paragraph 2 of Paper No. 8. Despite these advances, the invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 1 - 3, 6 - 12 and 15 - 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Koslow (U.S. 6,015,608). New claims 21 - 23 are also anticipated by Koslow. The details of the rejection can be found in paragraph 4 of Paper No. 9. The rejection is maintained.

The Applicant amended claims 1 and 17 and added new claim 21 to include the limitation that the "super-absorbent polymer particles capable of substantially spontaneously forming a three-dimensional array of elongated channels with said composite upon contact with a liquid wherein the three-dimensional array of elongated channels promotes liquid acquisition into said composite along the three-dimensional array of elongated channels prior to liquid absorption by the super-absorbent polymer particles". It should be noted that the Examiner considers the

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amendment to be a "capable of" type limitation. It has been held that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claim Rejections - 35 USC § 103

4. Claims 4 - 5, 13 - 14 and 19 - 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koslow (U.S. 6,015,608). New claims 24 - 25 are also rejected as being unpatentable over Koslow. The details of the rejection can be found in paragraph 6 of Paper No. 9. The rejection is maintained.

Response to Arguments

5. Applicant's arguments filed April 14, 2003 have been fully considered but they are not persuasive.

6. In response to Applicant's arguments that Koslow (US 6,015,608) does not set forth each and every element as claimed by the Applicant, the Examiner respectfully argues the contrary. As the independent claims are currently drafted, the language "capable of" is not given any patentable weight because it suggests that it can but not necessarily occur.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jennifer Boyd
July 10, 2003

